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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. 1487

HARTZELL PROPELLER FAN COMPANY,
Petitioner

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

HARRY P. DEES,
JOSEPH A. YOCUM
305 Union Federal Building
Evansville, Indiana 47708
Attorneys for Petitioner

HARRY P. DEES,
ARTHUR R. DONOVAN,
JOEEPH A. YOCUM,
KAHN, DEES, DONOVAN & KAHN
305 Union Federal Building
Evansville, Indiana 47708
Evansville, Indiana 47708
Of Counsel

INDEX

	PAGE
Opinion Below	2
Question Presented	3
Statute Involved	3
Definition	4
Rights of Employees	4
Unfair Labor Practices	5
Representatives and Election Statement	5
Statement	6
Reasons for Granting Writ	9
There is a conflict within and between and among the circuits and between the Board and one Circuit as to the legal effect of a union's waiver of fees and dues prior to an election held by the Board pursuant to Sections 7 and 9 of the Act	9
All waivers of fees and dues by unions prior to an election held by the Board must be declared unlawful under Sections 7 and 9 of the Act, since to do otherwise would frustrate the policy behind these sections of the Act, which raises a substantial question of federal law which had not been, but should be settled by this Court	10
In this case the Board and the Court below have adopted an erroneous construction of the concept of agency under Section 2(13) of the Act, which raises a substantial question of federal law which has not been, but should be settled by this Court	13
The Board and the Court below have adopted an erroneous standard as to the effect of unlawful conduct upon employees covered by the Act contrary to the requirements of the Act and in a way in conflict with the applicable decisions of this Court	16
Conclusion	19

CASES CITED

PAGE

Amalgamated Clothing Workers of America, AFL-CIO v. N.L.R.B., 345 F. 2nd 268 (CA-2 1965) 10

Celanese Corp. of America v. N.L.R.B., 291 F. 2d 225 (CA-7 1961) 18

Dit-Mco Incorporated, 163 NLRB 1019, 1022 (1967) 10, 11

General Shoe Corporation, 77 NLRB 127 (1948) 18

Gruen Watch Co., 108 NLRB 610, 613 (1954) 11

I.L.G.W.U. v. N.L.R.B., 366 U. S. 731, 81 S. Ct. 1603, 6 L. Ed. 2d (1961) 18

Intercontinental Mfg. Co., Inc., 66 LRRM 1156, fn. 3, 167 NLRB 769, 770 fn. 3 (1967) 17

International Association of Machinists v. N.L.R.B., 311 U. S. 72, 80, 61 S. Ct. 83, 85 L. Ed. 50 (1940) 14, 15

Janler Plastic Mold Corp., 75 LRRM 1366, fn. 3, 186 NLRB No. 80 (1970) 13

Lach-Simpkins Dental Labs, 75 LRRM 1385, 1386, 186 NLRB No. 116 (1970) 13

Lee Cylinder Division of Golay & Co., Inc. 156 NLRB 1252 (1966) 18

Lobue Bros., 109 NLRB 1181 (1954) 11

Marine Engineers Beneficial Asso. v. Interlake S. S. Co., 370 U. S. 173, 82 S. Ct. 1237, 8 L. Ed. 2d 418 (1962) 17

N.L.R.B. v. Brown, 380 U. S. 278, 291, 85 S. Ct. 980, 13 L. Ed. 2d 839 (1965) 18

N.L.R.B. v. Burnup and Sims, Inc., 379 U. S. 21, 23, 85 S. Ct. 171, 13 L. Ed 2d 1 (1967) 12

N.L.R.B. v. Erie Resister Corp., 373 U. S. 221, 83 S. Ct. 1139, 94 ALR2d 1147, 10 L. Ed. 2d 308 (1963) 12

N.L.R.B. v. Exchange Parts Co., 375 U. S. 405, 409, 84 S. Ct. 457, 11 L. Ed. 2d 435 (1964) 11

N.L.R.B. v. Gafner Automotive & Machine, Inc., 400 F. 2d 10 (CA-6 1968) 9

N.L.R.B. v. General Metal Products Company, 410 F. 2d 473, 476 (CA-6 1969) 14

N.L.R.B. v. Gilmore Industries, 341 F. 2d 240 (CA-6 1965) 9

N.L.R.B. v. Gissel Packing Co., 89 S. Ct. 1918, 395 U. S. 575, 23 L. Ed. 2d 547 (1969) 12, 18

N.L.R.B. v. Gorbea, Perez & Morell, 328 F. 2d 679 (CA-1 1964) 10

N.L.R.B. v. Trancoa Chemical Corporation, 303 F. 2d 456 (CA-1 1962) 18

N.L.R.B. v. Wyman-Gordon Company, 89 S. Ct. 1426, 394 U. S. 759 (1969) 12

Packard Motor Car Co. v. N.L.R.B., 330 U. S. 485, 67 S. Ct. 789, 91 L. Ed. 1040 (1947) 14

U.A.W. v. Wisconsin Emp. Sec. Bd., 351 U. S. 266, 76 S. Ct. 794, 100 L. Ed. 1162 (1956) 16

United Mine Workers of America v. Gibbs, 383 U. S. 714, 736, 86 S. Ct. 1130, 16 L. Ed. 2d 234 (1966) 14

STATUTES

Sections 2, 7, 8 and 9 of the Labor-Management Relations Act, 29 U.S.C.A. 152, 157, 158, 159 ..... 3, 4, 5

MISCELLANEOUS

Anno., "Construction of S. 8(b) (1) (A) of the Taft-Hartley Acts Making it an Unfair Labor Practice for Unions to Coerce Employees in Exercising their Rights to Join in or Refrain from Union Activities," 18 L. Ed. 2d 1651, 1658-60; 98 L. Ed. 496; 4 L. Ed. 2d 2026 16

Labor Relations Yearbook 516-20 (1970) 12

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. .....

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Petitioner

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United Stats

The Petitioner, Hartzell Propeller Fan Company, prays that a writ of certiorari issue to review the decree of the United States Court of Appeals for the Sixth Circuit, granting enforcement of an order of the National Labor Relations Board (hereafter called the "Board") by an order.

OPINIONS BELOW

The Court of Appeals for the Sixth Circuit rendered an opinion in the form of an order on January 8, 1971, which in relevant part states:

> "This case is before the Court on the application of the National Labor Relations Board to enforce an order against respondent. The decision and order of the Board are reported in 172 N.L.R.B. No. 163.
>
> "The Union won a Board-supervised election by a vote of 71 to 54 and was certified as bargaining represenative. The case involved a review of both a representation proceeding and the unfair labor practice proceeding, including the order requiring respondent to bargain with the Union. Reference is made to the decision of the Board for a complete recitation of the facts.
>
> "We find that the decision of the Board is supported by substantial evidence on the record considered as a whole, *N.L.R.B. v. Gaffner Automotive & Machine Co., Inc.*, 400 F. 2d 10 (6th Cir.)
>
> "It is ORDERED that the order of the Board be and it is hereby enforced.
>
> "Judge O'Sullivan dissents. He would deny enforcement on the ground that the Union was guilty of coercion, threats and intimidation and that the decision of the Board is not supported by substantial evidence on the record considered as a whole.
>
> "Entered by order of the Court."

The above was issued and subsequent to that date a petition to stay the mandate was timely filed and granted. This petition is filed pursuant thereto. The above "order" is the decision of the Court below in this case. Citations to the record are to the Appendix filed in the Court below, copies of which were filed with the

record as certified by the Clerk of the Court below and required by Federal Rules of Appellate Procedure, Rule 30. The Appendix filed with the Court below and with this Court will be cited as "Appendix," "A.," and page number, "p."

QUESTIONS PRESENTED

1. There is a conflict within and between and among the circuits and between the Board and one Circuit as to the legal effect of a unions waiver of fees and dues prior to an election held by the Board pursuant to Sections 7 and 9 of the Act.

2. All waivers of fees and dues by unions prior to an election held by the Board must be declared unlawful under Sections 7 and 9 of the Act, since to do otherwise would frustrate the policy behind these sections of the Act, which raises a substantial question of federal law which had not been, but should be settled by this Court.

3. In this case the Board and the Court below have adopted an erroneous construction of the concept of agency under Section 2(13) of the Act, which raises a substantial question of federal law which has not been, but should be settled by this Court.

4. The Board and the Court below have adopted an erroneous standard as to the effect of unlawful conduct upon the employees covered by the Act contrary to the requirements of the Act and in a way in conflict with the applicable decisions of this Court.

STATUTE INVOLVED

The statute involved is the National Labor Relations Act, as amended, and more specifically, Sections 2, 7,

8 and 9 of this Act, 29 U.S.C.A. 152, 157, 158, 159, the applicable parts of which are as follows:

"Text of Labor Management Relations Act, 1947
as Amended by Public Law 86-257, 1959*
(Public Law 101-80th Congress)

AN ACT

* * * * *

DEFINITIONS

SEC. 2. When used in this Act—* * * * *
(13) In determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3).

UNFAIR LABOR PRACTICES

SEC. 8(a) It shall be an unfair labor practice for an employer —

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents —

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7; *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

* * * * *

REPRESENTATIVES AND ELECTIONS

SEC. 9 * * * * *

(d) Whenever an order of the Board made pursuant to section 10(c) is based in whole or in part upon facts certified following an investigation pursuant to sub-section (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under section 10(e) or 10(f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be

made and entered upon the pleadings, testimony, and proceedings set forth in such transcript."

STATEMENT

Petitioner operates a plant in Piqua, Ohio where it is engaged in the production of fans and similar items. On November 30, 1967, under the direction and supervision of the Board, a secret ballot election was conducted among its employees. The results of the election were 71 for the union and 54 for the company with two ballots challenged. On December 7, 1967 Petitioner filed objections to the conduct of the election and thereafter a hearing was held on these objections on February 28, 1968. In a report issued after the hearing the agent of the N.L.R.B. presiding at the hearing overruled Petitioner's objections and this ruling was affirmed by the Board both in the representation proceeding and in a subsequent unfair labor practice case upon a motion for summary judgment. The unfair labor practice case arose because of Petitioner's refusal to bargain with the union involved in the representation case as a means of testing the validity of the Board's rulings in the courts. It is Petitioner's contention that certain events took place prior to the election of November 30, 1967, which are best described in the following.

All of the witnesses called at the hearing by Petitioner were rank-and-file employees and all testified as to what had happened to them or their fellow employees either on Petitioner's plant premises or at union meetings. These employees were not highly paid; for example, one received take-home pay in the amount of $81.25 per week. (A. 94; also see A. 120; A. 140; A. 168; A. 214; A. 224; A. 243) During the union cam-

paign there was much discussion about union initiation fees and dues as these items related to the employee's obligation to pay and the time such payments were due. Even those actively involved on behalf of the union had an incomplete understanding of the obligations due the union. (A. 235) Numerous employees indicated it was their understanding that any employee who had not paid a $10 initiation fee prior to the election would be required to pay a $50 or $100 fee after the election, were the union to win and according to the hourly rate of pay. (A. 78; A. 84; A. 105-07; A. 111-13; A. 122; A. 131-32; A. 144-48; A. 157; A. 172; A. 240; A. 249; A. 253; A. 254-58; A. 280; A. 290; A. 338) A union official testified there was a thirty day grace period after the execution of a union contract during which the employees could join the union at the reduced fee schedule, yet an employee of Petitioner testified nothing was known about this until a week or so before the hearing. (A. 132-33; A. 144; A. 146; also see A. 249) The union never communicated to the employees of Petitioner in writing its official position as to union fees and dues, while Petitioner prior to the election informed its employees of what it understood was the union's position on these matters. (A. 348)

Also during the pre-election period employees of Petitioner were threatened by fellow employees who were active on behalf of the union. These threats occurred on Petitioner's premises and, apparently, during working hours if not on actual work time. One threat, however, was made at a union meeting by a union official, which was in addition to the statements set out above concerning fee waivers. One employee testified she was told that if she did not pay her money and the union won the election it could take her to court and she could lose her job. (A. 40-41) During a conversa-

tion about union fees, this same employee was told by an active union adherent that he understood she had two children. This was after she had refused to pay her money. (A. 42) Another employee testified he overheard two active union adherents indicate an employee opposed to the union would "feel funny" if he left work and found his car burned. (A. 173) The same anti-union employee was told by an active union adherent that if he did not pay his money and sign up for the union he would have his head bashed in, or possibly, if this could not be done by a pro-union employee alone, he would get help. (A. 203) Another employee was told by a pro-union employee, she might feel funny if there was some dynamite placed in her car. (A. 216) At a union meeting, an admitted union agent told a group of Petitioner's employees that in the event of a strike at the plant in question, the other plants of Petitioner would not receive deliveries. (A. 198)

In the proceedings below not all of the above evidence was credited, but in its brief before the Court below the Board accepted as proven three instances of coercion. (Board's Brief, 12-13, fn. 14) The record shows the union adherents involved in admitted acts of coercion were known to the employees of Petitioner as those for the union, had hired halls for union meetings, accepted receipts for fee payments, and one of them sat at the front of a meeting with admitted union representatives. These men also served as contacts for recognized union representatives with reference to Petitioner's employees. (A. 65; A. 205; A. 285; A. 283-84; A. 293; A. 310-11; A. 279-80; A. 177; A. 225; A. 234) Petitioner would admit to this Court that there is a dispute as to the facts and what they imply.

REASONS FOR GRANTING THE WRIT

There is a Conflict Within and Between the Circuits and Between the Board and one Circuit as to the Legal Effect of a Union's *W*aiver of Fees and Dues Prior to an Election Held by the Board Pursuant to Sections 7 and 9 of the Act.

Due to the fact the "order" of the Court below gives virtually no explication of the reasoning behind its granting enforcement of the Board's Decision and Order, the status of the rule on union fee and dues waivers prior to a Board conducted election in the courts is not certain. This failure to explicate by the Court below leaves Petitioner with no alternative but to take the position that there is a conflict within the decisions of the Court below unless the instant case amounts to a *sub silentio* overruling of one of its prior decisions. Thus, in *N.L.R.B. v. Gilmore Industries*, 341 F. 2d 240 (CA-6 1965) the Court below refused enforcement of a Board order on the ground that a fee waiver conditioned on an election victory in the sense that those who did not pay the small fee before the election would have to pay a much higher fee after the election, was unlawful, particularly because the difference in the size of the fee involved is substantial, and the true size of the fee was not disclosed. It is Petitioner's position that these facts exist in the record in this case.

The Court below, however, in *N.L.R.B. v. Gafner Automotive & Machine, Inc.*, 400 F. 2d 10 (CA-6 1968) indicated fee waivers were valid if not conditioned on the outcome of an election, ignoring the size of the fee involved as a factor, and without explication chose to follow *Gafner* in the instant case. As pointed out in its brief to the Court below the Board interprets the Court below as being opposed to its rule in cases of

this type which is stated as "waivers, or provisional waivers, of union initiation fees, whether contingent upon the results of an election or not, have no improper effect on the freedom of choice of the electorate, and do not constitute a basis for setting aside an election." *Dit-Mco Incorporated*, 163, NLRB 1019, 1022 (1967) affirmed by accepting the preceding as valid and controlling, 428 F. 2d 774 (CA-8 1970). In sum, if these decisions be read for what they say there are conflicts in the decisional law in the area of union fee waivers, requiring clarificaton by ths Court. Similarly, the First Circuit follows the *Gilmore* reasoning, while the Second Circuit follows the *Dit-Mco* reasoning. *N.L.R.B. v. Gorbea, Perez & Morell*, 328 F. 2d 679 (CA-1 1964) should be compared with *Amalgamated Clothing Workers of America, AFL-CIO v. N.L.R.B.*, 345 F. 2d 268 (CA-2 1965)

All Waivers of Fees and Dues by Unions Prior to an Election Held by the Board Must be Declared Unlawful Under Sections 7 and 9 of the Act, Since to do Otherwise Would Frustrate the Policy Behind These Sections of the Act, Which Raises a Substantial Question of Federal Law Which had not Been, but Should be Settled by this Court.

Section 7 of the National Labor Relations Act, as amended, 29 U.S.C.A. 157 provides, in relevant part, that "employees shall have the right to self-organization, to form, join, or assist labor organizations . . . and shall also have the right to refrain from any or all of such activities." In protecting these rights, given parity under the Act, Section 8(a)(1) of the Act, as amended, 29 U.S.C.A. 158(a)(1), provides in relevant part, that "it shall be an unfair labor practice for an employer — (1) to interfere with, restrain, or coerce

employees in the exercise of the rights guarantee in Section 7 of the Act, while Section 8(b)(1)(A) of the Act as amended, 2 9U.S.C.A. 158(b)(1)(A) in relevant part provides that "it shall be an unfair labor practice for a labor organization or its agents — (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7." It has been clear for a number of years that employers coerce and restrain their employees when they condition in any way the receipt of benefits on the outcime of an election. In fact, even where benefits are placed into effect during an election period on an unconditional basis they amount to unlawful interference, where an anti-union purpose is shown. This is especially so when the so-called waiver, be it conditional or unconditional, in the instant case, was coupled with a direct threat of loss of employment, physical threats made to employees and a threat of a secondary boycott at Petitioner's other locations. *N.L.R.B. v. Exchange Parts Co.*, 375 U.S. 405, 409, 84 S. Ct. 457, 11 L. Ed. 2d 435 (1964).

Of course, unions must live during an organizational compaign by their promises of improvements and this is apparently the basis for the distinction between "interference with, restrain or coerce" as to unions under the Act. However, where fee waivers of any kind are coupled with threats it would seem clear employees are subjected to exactly the kind of conduct Section 8(b)(A) of the Act was passed to prohibit. Prior to *Dit-Mco Incorporated*, 163 NLRB 1019 (1967) it had been the Board's position that fee waivers "contingent on how the employees voted in the election or on the results of the election" were unlawful. *Gruen Watch Co.*, 108 NLRB 610, 613 (1954); *Lobue Bros.*, 109 NLRB 1181 (1954). Similarly, where as here, the waiver involves a considerable amount of money — $50 or

$100 as opposed to $10 for employees taking home about $90 a week — it would seem the waiver itself is inherently coercive. It has long been held that certain conduct on the part of an employer is inherently coercive, *N.L.R.B. v. Burnup and Sims, Inc.*, 379 U.S. 21, 23, 85 S. Ct. 171, 13 L. Ed. 2d (1967); *N.L.R.B. v. Erie Resister Corp.*, 373 U.S. 221, 83 S. Ct. 1139, 94 ALR2d 1147, 10 L. Ed. 2d 308 (1963).

It would seem less than candid for the Board to state, as it does in the instant case, and in *Dit-Mco* that all employees need to do is vote against the union and the fee waiver problem is solved. Unions in fact win more than fifty percent of the elections conducted by the Board and the simple act of voting against the union just does not solve the problem. 1969 LABOR RELATIONS YEARBOOK 516-20 (1970). Similarly, employers are now required by law to supply unions with the names and addresses of all eligible voters; and therefore, regardless of what an individual employee's attitude toward unionization is, the union can reach him literally where he lives. *N.L.R.B. v. Wyman-Gordon Company*, 89 S. Ct. 1426, 394 U.S. 759 (1969). When this is coupled with the fact that unions can, where circumstances permit, rely on union cards as a substitute for an election, it would seem to be clear that fee waivers, if valid, would establish in the context of this and all similar cases a set of facts so favorable to unionization as to destroy the concept of "the right to refrain" in Section 7 of the Act. *N.L.R.B. v. Gissel Packing Co.*, 89 S. Ct. 1918, 395 U.S. 575, 23 L. Ed. 2d 547 (1969).

As a matter of policy it is becoming increasingly apparent that unions are no longer so weak and ineffectual as to require governmental protection. Congress recognized this when it amended the Act in 1947

by adding the right to refrain language to Section 7, as well as the unfair labor practice language in Section 8. It would seem to be time to recognize the implications of these amendments and their attempt to establish parity of rights under the Act as to joining or refraining from joining a union. Certainly it does not require anything more than a working knowledge of what appears in the newspapers, much less expertise, to know unions in fact now have the power to make their promises or threats, as the case may be, come true. One member of the Board itself has come to this conclusion. *Lach-Simpkins Dental Labs*, 75 LRRM 1385, 1386, 186 NLRB No. 116 (1970); *Janler Plastic Mold Corp.*, 75 LRRM 1366, fn. 3, 186 NLRB No. 80 (1970).

In this Case the Board and the Court Below Have Adopted an Erroneous Construction of the Concept of Agency Under Section 2(13) of the Act, Which Raises a Substantial Question of Federal Law Which Has Not Been, But Should be Settled by This Court.

As pointed out in the statement, the employees of Petitioner who played leading parts in the fee waiver and threat campaign at the plant gave every indication of being agents on behalf of the union. Certainly when one holds himself out by insisting fellow employees sign cards, gives receipts for dues, sits at the front table of a meeting chaired by admitted union officials, and hires halls for union meetings, he would seem to be an agent. This is particularly true when Section 2(13) of the Act, 29 U.S.C.A. 152(13), provides:

"In determining whether any person is acting as an 'agent' so as to make such other person responsible for his acts, the question of whether the specific

> acts performed were actually authorized or subsequently ratified shall not be controlling."

As this Court has recognized, the above was passed in recognition of the modern and broader concepts of agency and as a means of bringing the Act into alignment with these concepts. *United Mine Workers of America v. Gibbs*, 383 U.S. 714, 736, 86 S. Ct. 1130, 16 L. Ed. 2d 234 (1966).

Although the Court failed to discuss the issue of agency under the Act, more significant is the fact the only reference to the issue was at the hearing level wherein the evidence set out in Petitioner's statement was not really discredited or discussed, but rather, it was ignored. (A. 12-14) Most significant, however, is the finding that:

> "(t)the record clearly indicates that Petitioner (the union) did not authorize or ratify the conduct of which the Employer (Petitioner) here complains and in fact was not aware of its alleged occurrence until after the election." (A 13)

It is obvious this finding is contrary to the statutory requirements set out above, yet neither the Board nor the Court below chose to comment on this matter. This is strange, indeed, in light of the Court below's position that Section 2(13) of the Act is to be given "a liberal construction." *N.L.R.B. v. General Metal Products Company*, 410 F. 2d 473, 476 (CA-6 1969) citing with approval *International Association of Machinists v. N.L.R.B.*, 311 U.S. 72, 80, 61 S .Ct. 83, 85 L. Ed. 50 (1940); *Packard Motor Car Co. v. N.L.R.B.*, 330 U.S. 485, 67 S. Ct. 789, 91 L. Ed. 1040 (1947). In light of the preceding it would seem clear that unless a restrictive and highly technical treatment be given the concept of agency, this case must be either remanded

or reversed, or as stated by this Court:

> "We are dealing here with private rights . . . not with technical concepts pertinent to an employer's legal responsibility to third persons for acts of his servants, but with a clear legislative policy to free the collective bargaining process from all taint of employer's domination or influence. The existence of that interference must be determined by careful scrutiny of all the factors, often subtle, which restrain the employees' choice for which the employer may fairly said to be responsible. Thus where the employees would have just cause to believe that solicitors professedly for a labor organization were acting for and on behalf of management, the Board would be justified in concluding that they did not have the complete and unhampered freedom of choice which the Act contemplates." *International Association of Machinists, etc. v. N.L.R.B.*, 61 S. Ct. 83, 88, 311 U.S. 72, 80, 85 L. Ed. 50 (1940)

Unless the Board adopts a stance amounting to a violation of due process and equal protection of the law under the Fifth Amendment, if the test announced by this court is to have equal application to those within the ambit of the Act's regulation, then there can be no doubt the underpinning for the Board's determination on the agency issues in this case is invalid and so is the tacit acceptance of this determination by the Court below, albeit this might require remand of this case. The reason this is so is that if the test is "just cause to believe," it is uncontroverted in the record that those involved in the admitted coercion were also those known to the employees to be acting on behalf of the union. (A. 40-44; A. 65; A. 173; A. 205; A. 283-85; A. 279-80; A. 177; A. 225; A. 234; A. 203; A. 216)

The Board and the Court Below Have Adopted an Erroneous Standard as to the Effect of Unlawful Conduct Upon Employees Covered by the Act Contrary to the Requirements of the Act and in a Way in Conflict With the Applicable Decisions of This Court.

In granting enforcement of the Board's order and decision the Court below affirmed the portions of the Hearing Officer's opinion as to the finding that although Petitioner's employees had been threatened and intimidated the conduct was isolated and by use of a subjective standard did not permeate the campaign. (R.A. 13-17) The conduct involved — threats of violence and bodily injury ,as well as possible loss of employment — has been found by this Court to be violative of Section 8(b)(1)(A) of the Act. *U.A.W. v. Wisconsin Emp. Sec. Bd.*, 351 U.S. 266, 76 S. Ct. 794, 100 L. Ed. 1162 (1956; Anno., "Construction of S. 8(b)(1)(A) of the Taft-Hartley Acts Making it an Unfair Labor Practice for Unions to Coerce Employees in Exercising their Rights to Join in or Refrain from Union Activities," 18 L. Ed. 2d 1651, 1658-60; 98 L. Ed. 496; 4 L. Ed. 2d 2026. Similarly, the subjective standard referred to above has been specifically rejected by the Board on the basis of its reading of this Court's position, thus:

> "The Hearing Officer observed that there were two supervisors who made statements which could have had a restraining or coercive effect on six employees out of a total employee compliment of approximately 730 eligible voters, and I feel this point to be most relevant, particularly in view of the existence of certain friendly relationships. However, the restraining effect of coercive conduct is not limited to the employees directly involved. Rather,

the Board and the courts have long recognized that employer interrogation and threats concerning union activity, particularly in an industral plant and during a pre-election campaign are likely to receive prompt and wide circulation. Thus, to evaluate properly the probable effect of conduct which is coercive in nature, the number of instances of interference, or the number of employees directly involved cannot serve as determinating factors."

* * * * *

"3." See *N.L.R.B. v. Donnelly Garment Co.*, 330 U.S. 219, 231, 19 LRRM 2317, where the Supreme Court observed that 'a feeling by employees that they were under no sense of constraint . . . is a subtle thing, and the recognition of constraint may call for a high degree of introspective perception' . . . Since the impact of the specific conduct upon the employees directly involved is so inexactly ascertainable, the possibility of measuring the precise impact upon others not identified would appear futile. However, as the Supreme Court further observed in that case, 'Out of repeated instances of hearing the same thing, a generalization as to its worth will almost inevitable emerge in the thoughts of the tribunal." *Intercontinental Mfg. Co., Inc.*, 66 LRRM 1156, fn. 3, 167 NLRB 769, 770, fn. 3 (1967)

Why neither the Court below, nor the Board, came to grips with these problems, in Petitioner's view does amount to a violation of equal protection and due process within the meaning of the Fifth and Fourteenth Amendments. This Court has long taken the position that the standards applicable under 8(b) are the same as those under 8(a) of the Act. *Marine Engineers Beneficial Asso. v. Interlake S.S. Co.*, 370 U.S.

173, 82 S. Ct. 1237, 8 L. Ed. 2d 418 (1962); *I.L.G.W.U. v. N.L.R.B.*, 366 U.S. 731, 81 S. Ct. 1603, 6 L. Ed 2d 762 (1961); and rather recently this Court has admonished the Courts below with:

> "Reviewing courts are not obliged to stand aside and rubber stamp their affirmance of administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute." *N.L.R.B. v. Brown*, 380 U.S. 278, 291, 85 S. Ct. 980, 13 L. Ed. 2d 839 (1965)

In addition, for some time now the Board has applied a lesser standard to election objections than it has to unfair labor practice matters. In sum, without the unfair labor practices shown in Petitioner's statement, the Board under its own standards would have set the election aside in the instant case. *General Shoe Corporation*, 77 NLRB 127 (1948). Similarly, the test applied has been objective in the sense that where threats are shown there is no need to show impact of such conduct on the voters, nor is it necessary to show anything more than whether the conduct charged was reasonably calculated to interfere with the employees' free choice. *N.L.R.B. v. Trancoa Chemical Corporation*, 303 F. 2nd 456 (CA-1 1962); *Celanese Corp. of America v. N.L.R.B.*, 291 F. 2d 225 (CA-7 1961); *Lee Cylinder Division of Bolay & Co., Inc.*, 156 NLRB 1252 (1966). The basis for this approach is statutory, since were litigants required to show the subjective effect of improper conduct arising under the Act, employees would be left without the Section 7 rights Congress has found to need protection. *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575, 89 S. Ct. 1918, 23 L. Ed. 2d 547 (1969).

CONCLUSION

For the reasons stated above, Petitioner asks that its petition be granted or the cause be remanded, and for all further and proper relief in the premises.

Respectfully submitted,

HARRY P. DEES,
JOSEPH A. YOCUM
305 Union Federal Building
Evansville, Indiana 47708
Attorneys for Petitioner

HARRY P. DEES,
ARTHUR R. DONOVAN,
JOEEPH A. YOCUM,
KAHN, DEES, DONOVAN & KAHN
305 Union Federal Building
Of Counsel